

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 23067 of 2004

Between:

T.Satyanarayana, S/o.Durgaiiah,
Primary Agricultural Co.Operative Credit society Ltd., Dharmapuri Village & Mandal,
Karimnagar District, R/o.H.No.5-79, Kumariwada, Huzarabad, Karimangar District.

..... PETITIONER

AND

- 1 The Person-in-Charge, Primary Agricultural Co-operative Credit Society Limited,
Dharmapuri, Dharmapuri Village & Mandal,
Karimangar District.
- 2 The Deputy Registrar of Co-operative societies/ Divisional Co-operative Officer,
Co-operative Department, Jagtial, Karimnagar District.
- 3 The Joint Registrar/District Co-operative officer, Co-operative Department,
Karimnagar, Karimnagar District.
- 4 The General Manager, Karimanagar District Co.operative Central Bank Ltd.,
Karimnagar, Karimnagar District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or a direction, particularly one in the nature of writ of Mandamus, declaring the action of the first Respondent in removing the petitioner from the service is arbitrary, and un-reasonable and contrary to Law and accordingly, set aside the impugned order of the first respondent made in No.1 of 2004-05 dt. 06-11-2004 and consequently direct the Respondents to re-instate the petitioner in service in the post of Paid Secretary, Primary Agricultural Co.op. Credit Society Ltd., Dharmapuri village and Mandal Karimangar Dt. by paying all the benefits including arrears of salary.

Counsel for the Petitioner: MR.G.TUHIN KUMAR

Counsel for the Respondent Nos. 1 & 4.: MR.P.M.GOPALA RAO

Counsel for the Respondent Nos. 2 & 3: G.P. for Cooperation.

The Court made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 23067 of 2004

ORDER:

This writ petition is filed challenging the action of the respondents in removing the petitioner from service as arbitrary and illegal.

The brief facts that are necessary for the disposal of the present writ petition may be stated as follows:

That on 2.3.2002 the 2nd respondent herein issued a surcharge notice on certain allegations calling for the explanation of the petitioner. Thereafter, the 2nd respondent passed a surcharge order under Section 60 of the A.P. Cooperative Societies Act (for short, 'the Act') fixing an amount of Rs.33,600/- and Rs.83,955/-. Pursuant to the surcharge proceedings, the 1st respondent passed orders under Section 59 placing the petitioner under suspension as he has misappropriated the funds to a tune of Rs.61,024/-. An execution petition was filed for recovery of the same. After filing of the execution petition, the petitioner paid Rs.61,200/- on 2.9.2003 in the 4th respondent bank and also paid Rs.24,900/- towards costs and interest. A regular departmental enquiry was conducted and the Sub-

Divisional Cooperative Officer vide his report dated 5.8.2003 observed that the petitioner is liable to pay Rs.36,307/- along with interest. After enquiry report, the 2nd respondent directed him to pay that amount. After calling for the explanation, a charge-memo was issued framing four charges. A Nodal Officer was appointed as Enquiry Officer to conduct domestic enquiry, who submitted his report on 16.2.2004. After accepting the report, the disciplinary authority gave a show-cause notice for which an explanation was given and the impugned order was passed for removal. Hence the present writ petition.

The 1st and 4th respondents filed their counter affidavit stating that the writ petition is not maintainable; that the petitioner is in the habit of misappropriating the funds and the conduct of the petitioner is unbecoming of the employee of the society; that the acts and deeds of the petitioner amount to major misconduct; that the Enquiry Officer recommended for reinstatement of the petitioner on humanitarian grounds stating that as the petitioner had paid the misappropriated amount no serious action is required; that the recommendation of the Enquiry Officer is not binding on the disciplinary authority and that after giving show-cause notice and after furnishing the copy of the report, the impugned proceedings have been passed and the Managing Committee is the competent authority to inflict punishment of dismissal. Hence he prays to dismiss the writ petition.

Learned counsel for the petitioner contended that the disciplinary authority not having satisfied with the findings of the Enquiry Officer ought to have given a show-cause notice and that the

other irregularities cannot be taken note of by the disciplinary authority in view of the fact that they were not put on charge in the enquiry; that the final orders have been passed without considering the representation; that what is not stated in the enquiry report cannot be improved by filing counter. It is also contended that the managing committee is the competent authority in respect of disciplinary matters but in this case the impugned proceedings have been issued by the Person-in-charge Committee who is having no jurisdiction.

On the other hand, learned counsel for the respondents contended that the bye-laws though approved by the Registrar have no statutory force. Unless there is a statutory violation of the provisions, the petitioner cannot challenge the same by filing writ petition; that no violation of any of the provisions of the Act or the Rules made there under has been stated by the petitioner; that several irregularities which were admitted have been mentioned incidentally but the same are not the subject matter of the charges; that the managing committee has taken a decision basing on the enquiry report and those proceedings were communicated by the person-in-charge and therefore there are no grounds to interfere with the impugned proceedings.

As per the service conditions of the employees of the Primary Agricultural Cooperative Societies, in respect of Secretary the Managing Committee is the authority to inflict punishments for major misconduct. The petitioner was placed under suspension w.e.f. 13.8.2003 for dishonest misappropriation and criminal breach of trust of the society funds to a tune of Rs.61,024/- and a regular departmental enquiry was conducted as per Section 51 of the

A.P.Cooperative Societies Act 1964. In the enquiry four charges were leveled against the petitioner, namely, (1) that he has collected loan amounts from the society members and less accounted in the cash book for Rs.5,400/-; (2) that he has credited the cash book at his will and as well as debited the same without sanction of sanctioning authority which is against the service rules of Secretary and thus an amount of Rs.3,109/- was kept with him as less cash balance; (3) that he has booked expenditure for purchasing of CKCC passbooks for an amount of Rs.5,800/- and the stock was not found in society nor the above amount was returned by him and (4) that he has misappropriated an amount of Rs.6,877/- by booking as expenditure against Jeep & Tractor hire charges, Diesel and Hamali charges without prior permission and sanction of sanctioning authorities.

The Enquiry Officer conducted a departmental enquiry and found the charges leveled against the petitioner, proved. However, he made an observation that since the petitioner has remitted the total misappropriation amount together with interest, on humanitarian grounds the petitioner may be reinstated into service. So far as the 1st contention of the learned counsel for the petitioner that the P.I.C. who issued the proceedings is not the authority to pass the impugned proceedings dated 6.11.2002 is concerned, it is not disputed before this court that the managing committee is the competent authority in respect of disciplinary matters against the employees of the society. Admittedly the proceedings dated 6.11.2004 was issued by the Person-in-charge of the society. All the material papers have been placed before the managing committee of the society and they passed resolution dated 6.11.2004 having

regard to the explanation of the petitioner, domestic enquiry report and other relevant records of the society and resolved to remove the petitioner from service. So, in pursuance of the resolution passed by the managing committee the impugned proceedings have been issued by the person-in-charge. Since the committee cannot issue the proceedings, they have to be carried out through execution. It is not the decision taken by the person-in-charge but it is the decision taken by the managing committee of the society which is the competent body to impose major penalty on the petitioner. Therefore, the 1st contention of the learned counsel for the petitioner is totally devoid of merit.

Some suggestions have been given by the Enquiry Officer to the disciplinary authority for reinstatement of the petitioner into service on humanitarian grounds. They are not binding upon the disciplinary authority. Considering the gravity of misconduct it is the disciplinary authority that has to take appropriate decision. Even otherwise, the Enquiry Officer himself categorically found the charges leveled against the petitioner proved. It may be a fact that the petitioner deposited the entire amount which was mis-utilized by him, with interest, but that does not absolve him of the liability. Even in case of temporary misappropriation the employees have to be dealt with hand in hand. Therefore, the recommendations of the Enquiry Officer need not be taken into consideration by the managing committee.

The other ground on which the learned counsel for the petitioner attacked the order of the respondents-authorities is that not only the allegations in the charges but also the managing committee

has taken note of several other irregularities brought to its notice, which are not the subject matter of the departmental enquiry, and therefore the managing committee exceeded its jurisdiction in taking note of several other irregularities which are not the subject matter of the enquiry. The findings of the disciplinary authority with regard to several other irregularities brought to the notice of the managing committee are only to show the past conduct of the petitioner. It is not solely basing on several other irregularities that the petitioner was removed from service. No doubt it may be a fact that the several other irregularities are not the subject matter of the enquiry but as seen from the impugned proceedings it is clear that the petitioner committed misappropriation of the funds of the society by breach of trust and caused loss to the society funds. The charges are very serious in nature and therefore the petitioner was rightly removed from service. Mentioning of several other irregularities is only incidental one but it is not that basing on those irregularities the petitioner was removed from service. Therefore, mere mention of several other irregularities without putting on notice does not in any way prejudice the case of the petitioner because even according to the petitioner he deposited the misappropriated amount with interest after enquiry.

The other contention of the learned counsel for the petitioner is that the final orders have been passed by the disciplinary authority without considering the representation of the petitioner. As seen from the impugned proceedings, the representation of the petitioner has also been considered. Even in the explanation nothing

has been stated by the petitioner with regard to the charges leveled against him, which are proved in the enquiry report. It is not the case of the petitioner that the findings of the Enquiry Officer are not based upon any evidence. So also, it is not the case of the petitioner that the enquiry was conducted without giving reasonable opportunity to the petitioner. As seen from the explanation, he only relies mainly on the recommendation of the Enquiry Officer for reinstatement. As already stated in the aforesaid paragraph, it is for the disciplinary authority to take appropriate decision. The recommendations if any by the Enquiry Officer do not bind the disciplinary authority.

The misappropriations relate to the period 2000-01 and 2001-02. After the 4th respondent filed execution petition for recovery of the amount, in the month of September, 2003 the amount as fixed in the surcharge proceedings has been paid with interest. That means, it is a case of misappropriation of the funds for a period of two years. The conducting of enquiry and the findings of the Enquiry Officer remain unchallenged.

For the aforesaid reasons, the order under challenge does not suffer from any incurable legal infirmities so as to call for interference by this court. The writ petition is totally devoid of merit and it is accordingly dismissed.

K.C. Bhanu, J.

Date: --02—2005.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Person-in-Charge, Primary Agricultural Co-operative Credit Society Limited, Dharmapuri, Dharmapuri Village & Mandal, Karimangar District.

2 The Deputy Registrar of Co-operative societies/ Divisional Co-operative Officer, Co-operative Department, Jagtial, Karimnagar District.

3 The Joint Registrar/District Co-operative officer, Co-operative Department, Karimnagar, Karimnagar District.

4 The General Manager, Karimnagar District Co-operative Central Bank Ltd., Karimnagar, Karimnagar District.

5. Two C.Cs. to the G.P. for Cooperation, High Court Buildings, Hyderabad (OUT).

6. 2 CD copies.